IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO (MVA) No.26 of 2004.

Date of decision: 12.10.2007.

Union of India .....Appellant

-Versus-

Smt.Shashi Aggarwal and others ....Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting? No

For the Appellant: Mr.Sandeep Sharma, Assistant Solicitor General of India.

For Respondents 1 & 2: Mr.R.K.Sharma, Advocate

Deepak Gupta, J. (Oral)

This appeal by the Union of India is directed against the Award of the Motor Accident Claims Tribunal, Chamba, H.P. (hereinafter referred to as the Tribunal), passed in Claim Petition No.80 of 2001 decided on 6.11.2003.

The claimants are the widow and son of deceased Surinder Aggarwal. It is the case of the claimants that on 5.10.2000 the deceased alongwith his elder son Deepak Kumar was travelling in Maruti Car No.PB-02N-4587 which was being driven by Jeewan Singh. When the Car reached near Drada on the Banikhet-Chamba Road a Shaktiman Truck bearing No.94-D-97754-K owned by the army came from the opposite side. Due to the rash and negligent driving of the truck it struck against the car which rolled into the ditch below the road. The claimants claimed compensation.

The stand of the Union of India is that the claimants have failed to prove that any accident took place between the Car and the truck. It is stated that in fact the car had crossed the truck and then the driver of the truck and other persons sitting in the truck heard a noise then they stopped the truck and found that the car had rolled off the road and no damage had been caused to the truck.

The learned Tribunal has held that the accident occurred due to the rash and negligent driving of the truck and has awarded compensation of Rs.5,45,000/-.

The claimants have examined PW-4 Sh.Jeewan Singh, driver of the Car who has categorically stated that the military truck came which was being driven in a rash and negligent manner and hit the car which rolled down into the ditch below the road. PW-3 Deepak Kumar, elder son of the deceased was also travelling in the car. He has also given a similar version. FIR Ext.P-3 was lodged by Jeewan Singh, driver of the Maruti Car within 2 hours of the occurrence. In this also rash and negligent driving is imputed to the driver of the truck. PW-5 Kalyan Singh, Head Constable, Police Station, Sadar, Chamba has proved on record the copy of the FIR Ext.P-3. He has further stated that after investigation a challan was presented against respondent No.2 Lakhvinder Singh in Court.

On behalf of the Union of India RW-1 Subedar Nazir Ahmed, RW-2 Kesar Singh and RW-3 Lakhvinder Singh have been examined. According to all these three persons the car had not hit the truck at all and there was no collision between the two vehicles. However, this stand of the witnesses is contradictory to the stand of respondent No.2

driver of the vehicle who in his reply has clearly stated that the accident had occurred by the use of the vehicle bearing registration No.PB-02N-4587. The respondent No.1 in its reply has stated that the Car rubbed against rear side of the vehicle and fled towards Chamba side and on hearing the sound the truck was stopped to see that if any damage has been caused to the truck or not. It was further stated that the Maruti car sped away towards Chamba side. The stand of the witnesses in the witness box is totally contradictory to the averments made in the replies. There is more than sufficient material to show that the accident occurred due to the rash and negligent driving of the driver of the truck.

As far as compensation is concerned, the claimants have proved the income tax return of the deceased for the previous year which showed that he had net income of Rs.89,893/- and on this had paid income tax of Rs.1420/-. The annual income of the deceased had been taken to be Rs.88,400/- and the learned Tribunal had deducted 40% of this for the personal expenses of the deceased and taken rest for the dependency of the family. Multiplier of 10 has been used keeping in view the fact that the age of the deceased was about 45 years at the time of the accident. Keeping in view the age of the deceased and the claimants the award is on the conservative side. It is not at all excessive. The award calls for no interference. The appeal is dismissed.

October 12 2007. **(Deepak Gupta),**
PV **Judge**